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IN THE
Supreme Court of the United States

— o —
October Term, 1946

— o —
No. **596 & 44** MISC.

— o —
CECIL L. WRIGHT,
Petitioner,
vs.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,
Respondent.

— o —
**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

— o —
+ CECIL L. WRIGHT,
No. 579—P. M. B., Alcatraz, California,
Petitioner In Propria Persona.



INDEX

Subject:	Page
Motion for Leave to Proceed in Forma Pauperis.....	1
Petition for Writ of Certiorari.....	3
Summary Statement of Matter Involved.....	3
Reason Assigned in Support of Petition.....	7
Prayer for Writ.....	8
Petition for Writ of Habeas Corpus.....	11

AUTHORITIES CITED

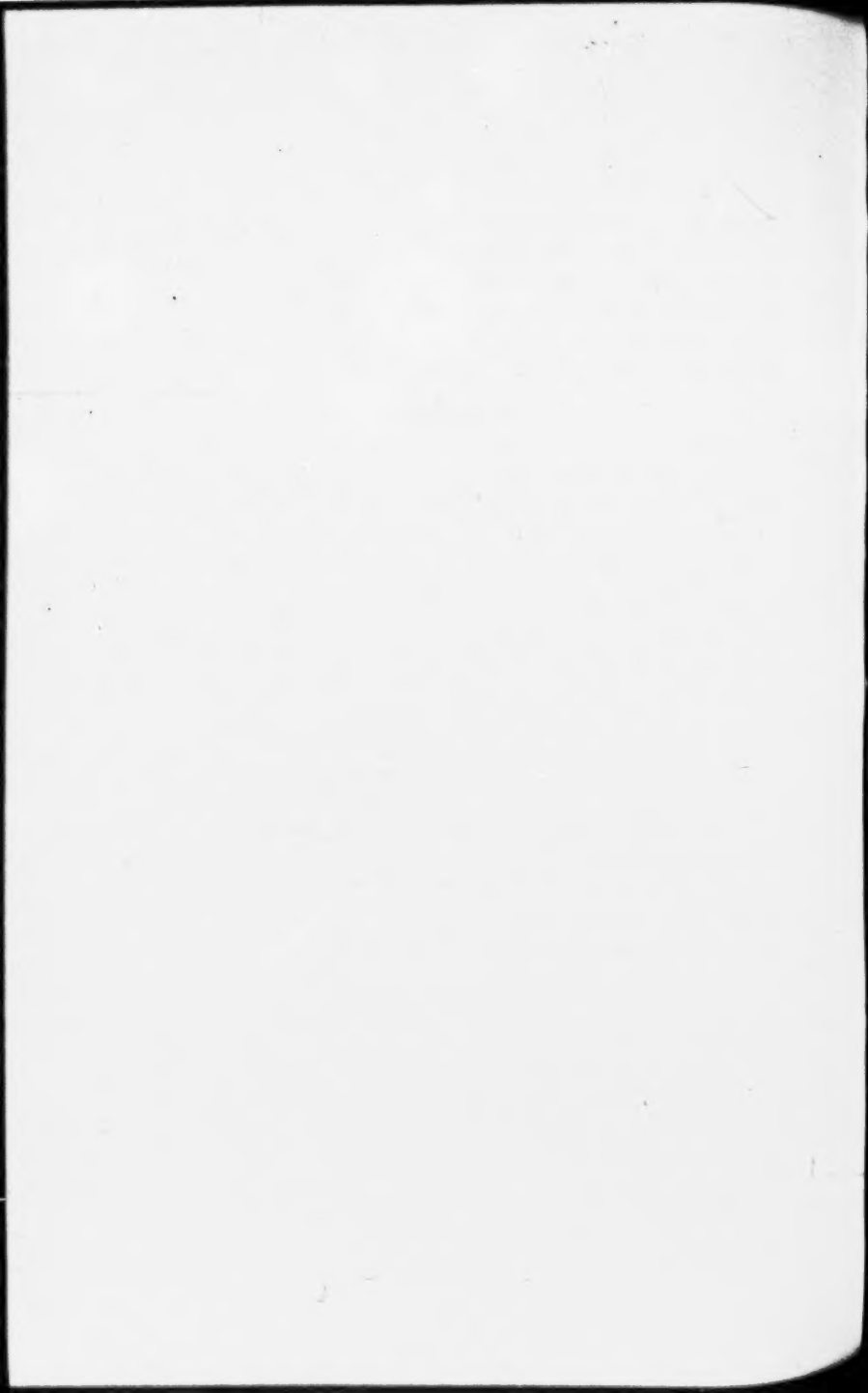
Cases:	
Downey v. United States, Dist. Columbia, 91 F. (2d) 223.....	6, 8
Grubb v. Public Utilities Commission of Ohio, et al. 281 U. S. 470	7
Johnston v. Wright, 9th Cir., 137 F. (2d) 914, Certiorari Abandoned	4, 8, 12
McNabb v. U. S., 318 C. S. 332, 63 S. Ct. 608, 87 L. Ed. 819, 825..	8
Peru, Ex Parte, 318 U. S. 578, 582, 583, 63 S. Ct. 793, 796, 87 L. Ed. —	15
Stoll v. Gottlieb, 305 U. S. 165.....	7
Wright, In re, 9th Cir., 51 Fed. Supp. 639, 644.....	4, 5
Wright v. Johnston, 9th Cir., 149 F. (2d) 648.....	7
Wright v. Johnston, No. 383 October Term, 1945.....	6, 7

PROVISIONS OF CONSTITUTION INVOLVED

United States Constitution, Amend. 4.....	8
United States Constitution, Amend. 5.....	8
United States Constitution, Amend. 6.....	8
Article 1, Section 9, Clause 2.....	8

STATUTES INVOLVED

18 U. S. C. A., Section 591.....	8, 14
18 U. S. C. A., Section 595.....	8, 14
28 U. S. C. A., Section 832.....	2
28 U. S. C., Section 451; 28 U. S. C. A., Section 451.....	15
28 U. S. C., Section 377; 28 U. S. C. A., Section 377.....	8, 15



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PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

— o — o —
MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS

United States of America,
State of California,
County of San Francisco—ss.

Cecil L. Wright, having been first duly sworn according to law, deposes and says: That he is a citizen of

the United States of America, by birth, and of legal age; that he desires to have leave to file and prosecute said petitions for Writ of Certiorari and Writ of Habeas Corpus in forma pauperis under the statutory provisions of Section 832 of Title 28 of the United States Code; that because of his poverty he is without sufficient funds to prepay the Clerk's general cost for docketing, or other cost, including printing of the record herein; that affiant has neither property nor security to furnish in payment therefor.

That affiant honestly believes he is lawfully entitled to the redress he seeks; that the attached petitions are meritorious and are brought to this Court in good faith.

Wherefore, affiant respectfully prays that he may have leave to prosecute the attached petitions in forma pauperis, without cost or fee, pursuant to said statute.

(Signed) CECIL L. WRIGHT,
Affiant-Petitioner.

Subscribed and sworn to before me this 3rd day
of OCTOBER, 1946.

(Seal)

Original signed and sealed

IN THE
Supreme Court of the United States

— o — o —
October Term, 1946

— o — o —
No.

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CECIL L. WRIGHT,
Petitioner,
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JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,
Respondent.

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PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

— o — o —
To the Honorable Fredrick Moore Vinson, Chief Justice,
and to the Honorable Associate Justices of the
Supreme Court of the United States:

I.

SUMMARY STATEMENT OF MATTER INVOLVED

Your petitioner, Cecil L. Wright, respectfully shows unto the Court that he was convicted in the United States

District Court of the Eastern District of Illinois, Danville Division, and was on the 17th day of September, 1930, duly sentenced, judgments entered,¹ commitments issued directing the marshal to convey petitioner to Leavenworth Penitentiary and there to be imprisoned pursuant to said sentence.²

On October 31, 1939, petitioner was released from the Illinois State Prison on state parole for the maximum of the state sentence, or until otherwise discharged by due course of law. As he was leaving the State Prison on parole a United States Marshal arrested petitioner under the original commitments issued September 17, 1930, and imprisoned petitioner in the Federal Penitentiary at Leavenworth, Kansas. Later petitioner complained because the Warden had started the sentence on October 31, 1939, the date of arrest by the Marshal. Petitioner filed for a Writ of Habeas Corpus in the Kansas Court and was immediately transferred to Alcatraz. Later, while imprisoned at Alcatraz, petitioner filed three petitions for Writ of Habeas Corpus in the California District Court; all were denied for reasons stated in 51 F. Supp. 639, 644, and 137 F. (2d) 914, 918. Thereafter, on October 7, 1942, petitioner presented his fourth petition to the Honorable William Denman, United States Circuit Judge, San Francisco, California, stating the basis of his claim and prayed that the writ issue and that he be awarded his freedom. The writ issued and the Warden made due return. Thereafter, petitioner filed his traverse. After a

-
- 1 At time of imposition of sentence by the Federal Court petitioner was under service of a state sentence in Illinois for a term of not less than one year and no more than life. (See 137 F. (2d) 914.)
 - 2 The Marshal held the commitments surrendering the petitioner back to the State Prison Authorities, from whence he had been taken by order of a Writ of Habeas Corpus and prosequendum.

hearing Judge Denman filed his written "Opinion and Order Granting Petition" (51 F. Supp. 639, 644).

The Warden-respondent appealed from the order of discharge, which appeal was affirmed on August 7, 1943 (R. 412 through to 418). The Circuit Court of Appeals for the Ninth Circuit entered its decree (R. 419) amending the order of release.

On August 26, 1943, the Warden-respondent petitioned the Circuit Court of Appeals for order staying issuance of mandate; a true copy is hereto annexed, designated Petitioner's Exhibit A, and by reference made a part hereof as though fully incorporated herein at length.

On August 26, 1943, the Circuit Court of Appeals entered order staying issuance of mandate to and including October 1, 1943; a true copy is hereto annexed, designated Petitioner's Exhibit B, and by reference made a part hereof as though fully incorporated herein at length.

On October 1, 1943, the Circuit Court of Appeals issued their mandate to the Court below, which was filed on October 4, 1943; a true and certified copy is hereto annexed, designated Petitioner's Exhibit C, and by reference made a part hereof as though fully incorporated herein at length.

On October 22, 1943, pursuant to the last paragraph of said mandate which provides, "Should the State of Illinois for a reasonable time not to exceed twenty days after notice refuse or neglect to accept custody of appellee, the warden shall release him without more; as so amended, the said order be, and hereby is, affirmed," the Warden-respondent gave petitioner \$20.00, clothing, transportation home, and discharged petitioner from custody, setting petitioner at liberty at Alcatraz, California.

On June 15, 1944, the State of Illinois extended to petitioner a pardon for the offense for which the State sentence was given, which order was approved after petitioner had furnished sufficient evidence that he could remain at liberty and that said discharge would not be incompatible with the welfare of society.

On June 17, 1944, two telegrams issued from the Department of Justice, Washington, D. C., to Carl J. Werner, United States Marshal, Danville, Illinois, directing him to proceed to Hammond, Indiana, and take custody of petitioner and commit petitioner to Alcatraz. True copies of such telegrams may be found in the transcript of record in *Wright v. Johnston*, No. 383, October Term, 1945, which was docketed in this Court.

On June 21, 1944, without notice to petitioner, the United States Marshal from Illinois came to petitioner's place of work at the Inland Steel Mills, Indiana Harbor, Indiana, illegally and unlawfully seized petitioner therefrom and unlawfully held petitioner incommunicado from all the Courts and Judicial Officers of the United States until he had illegally imprisoned petitioner in the Warden-respondent's custody.

On June 21st and June 22nd, 1944, in the absence of petitioner, the District Court of the United States of the Eastern District of Illinois, Danville Division, entertained the Government's petition~~s~~ to correct the record,³

3 In July, 1942, the sentencing judge testified under oath that he had advised petitioner (R. 242) that the sentence had begun to run shortly after it was imposed. The proceedings on June 21st and June 22nd, 1944, was a proceedings in a criminal action to correct the record, in which action petitioner was entitled to be present. See *Downey v. United States*, 91 F. (2d) 223.

made findings of fact and thereupon committed petitioner to the custody of the Attorney General.⁴

Petitioner has applied to the California District Court for petitions for Writ of Habeas Corpus, which petitions, that is, the first was denied without hearing and the Circuit Court refused to entertain appeal (149 F. (2d) 648) allowed by the District Court in forma pauperis; this Court denied certiorari.⁴ The second petition was denied without hearing; no appeal was prosecuted, in that the Warden-respondent unlawfully suppressed the Court's judgment until after the appeal time had expired by law. Two other petitions were rejected by the District Court and returned, in that the Judges were out of the city. Four other petitions were denied by a Circuit Judge without hearing. Two other petitions were rejected by two Circuit Judges and returned to petitioner.

II.

REASON ASSIGNED IN SUPPORT OF PETITIONS

(1) The decision of the United States Circuit Court of Appeals for the Ninth Circuit, discharging petitioner from federal custody, was final and resjudicata under the authority of decisions of this Court in *Grubb v. Public Utilities Commission of Ohio, et al.*, supra, 281 U. S. 470; *Stoll v. Gottlieb*, 305 U. S. 165.

(2) The United States Marshal from Illinois violated petitioner's constitutional rights to be heard in a criminal action, in that he unlawfully held petitioner incommunicado until he had illegally imprisoned petitioner in the Warden-respondent's custody. 18 U. S. C. A.,

⁴ See transcript of record, *Wright v. Johnston*, No. 383, October Term, 1945.

Sections 591 and 595; United States Const., Amend. 4; *McNabb v. United States*, 318 U. S. 332, 63 S. Ct. 608, 87 L. Ed. 819, 825.

(3) The United States District Court of the Eastern District of Illinois, Danville Division, violated petitioner's constitutional rights to be heard in a criminal action, in that it proceeded to correct the record in the absence of petitioner from that Court, which deprived petitioner of the right to be heard with assistance of counsel for his defense. United States Const., Amends. 5 and 6; *Downey v. United States*, 91 F. (2d) 223.

(4) The denial of petitions, in the California District Court, for Writ of Habeas Corpus for inquiry into cause of commitment was contrary to law, in that no hearings were had in said Court. That further rejecting of petitions for Writ of Habeas Corpus, both in the District Court and by the Circuit Judges, was contrary to law and in violation of Article I, Section 9, Clause 2, of the United States Constitution.

PRAYER FOR WRIT

Wherefore, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court in pursuance to Section 262 of the Judicial Code, 28 U. S. C. A., Section 377, directed to the United States Circuit Court of Appeals for the Ninth Circuit, San Francisco, California, commanding the said Clerk to certify and send to this Court, on a day certain to be named therein, a full and complete transcript of the record and all proceedings in the case of *James A. Johnston, Appellant, v. Cecil L. Wright, Appellee*, No. 10331, so that the judgment therein upon said

mandate there issued by said United States Circuit Court of Appeals for the Ninth Circuit may be declared final, and that a Writ of Mandate issue from this Honorable Court dismissing petition for Writ of Certiorari as being made out of time, and that the petition for Writ of Habeas Corpus attached hereto be issued directed to the Warden-respondent, James A. Johnston, commanding him to certify and send to this Honorable Court a true and complete return in cause of commitment, in that the petitioner has not had his day in Court, and that the petitioner be allowed sufficient time to file a traverse to said respondent's return and, that upon the petition for Writ of Habeas Corpus, the return thereto, the traverse to such return, that the petition for Writ of Habeas Corpus be granted and petitioner discharged forthwith.

Respectfully submitted,

CECIL L. WRIGHT,
Petitioner.

Dated: At Alcatraz, California,

October 3rd, 1946.



IN THE
Supreme Court of the United States

— o —
October Term, 1946

— o —
No......

— o —
CECIL L. WRIGHT,
Petitioner,

vs.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,
Respondent.

— o —
PETITION FOR WRIT OF HABEAS CORPUS

The Verified Petition of Cecil L. Wright for a Writ of Habeas Corpus respectfully shows:

1. That he is restrained of his liberty in the United States Penitentiary on the Island of Alcatraz, San Francisco Bay, California, and is in the immediate custody of the respondent, James A. Johnston, Warden, United States Penitentiary, Alcatraz, California.

2. That the cause or pretense of such imprisonment and restraint, according to the best knowledge and belief of your petitioner, is two telegrams issued by the Department of Justice on June 17, 1944, and two commitments issued on June 21st and June 22nd, 1944, and the

mandate which is attached hereto designated Petitioner's Exhibit C.

3. That said imprisonment and restraint are illegal, and their illegality consist in the following, among other things, to-wit:

(a) That on August 7, 1943, the Circuit Court of Appeals for the Ninth Circuit rendered decision "*Habeas Corpus*" affirming an order of discharge (51 Fed. Supp. 639), amending its decision providing for Writ of Certiorari, inter alia, making provisions for release pursuant to Title 28, U. S. C. A., Section 461 (R. 419).

Vide: Johnston v. Wright (9th), 137 Fed. (2d) 914 at page 918.

(b) That on August 26, 1943, respondent petitioned the Ninth Circuit Court of Appeals and filed with the Clerk thereof a petition for order staying issuance of mandate grounded upon the fact that he had not yet been instructed by the Attorney General to petition the Court for rehearing nor have they as yet been advised by the Attorney General whether or not to petition for a Writ of Certiorari; praying that such mandate be stayed to and including September 15, 1943, to enable the appellant to petition the Court for a rehearing and to and including October 1, 1943, in the event a petition for a rehearing not be filed or the same be denied, to enable appellant to petition the Supreme Court of the United States for a Writ of Certiorari. (See Exhibit A.)

(c) That on August 26, 1943, Circuit Judge Garrecht entered an order granting the prayer of appellant as set forth above. (See Exhibit B.)

(d) On October 21, 1943, pursuant to the last paragraph of the decision of the Ninth Circuit Court of Appeals, its mandate issued to the hearing Judge below affirming as modified it was affirmed, and (see Mandate, Exhibit C)

(e) On October 22, 1943, the respondent gave petitioner \$20.00, clothing, and a railroad ticket, discharging petitioner from his custody and restoring petitioner to his liberty.

(f) On June 15, 1944, the State of Illinois extended to petitioner a full discharge, which was approved or by the Governor, inter alia, that petitioner had furnished sufficient evidence that he could remain at liberty and his discharge would not be incompatible with the welfare of society.

(g) On June 21, 1944, at which time petitioner was working in the Inland Steel Mills, Indiana Harbor, Indiana, Carl J. Werner, United States Marshal from Danville, Illinois, entered into the blast furnace department of said steel mills, by force and violence, and by putting in fear, unlawfully and without valid authority, seized petitioner from said steel mills, confined, kidnaped, inveigled, decoyed, abducted and carried away the petitioner, in that the aforesaid Marshal held petitioner incommunicado from the United States Commissioner at Hammond, Indiana, refused petitioner the right under the Sixth Amendment to the United States Constitution to call an attorney; denied petitioner the right to file a petition for Writ of Habeas Corpus in the Federal Court at Hammond, Indiana, to test the seizure; refused, neglected and denied to take petitioner before the nearest judicial officer under the mandatory provisions of the United States Code

by Title 18, Section 595; and that said seizure of petitioner from his Indiana place of work and removal to Alcatraz was in violation of his constitutional rights under the Fourth, Fifth and Sixth Amendments to the United States Constitution, contrary to the removal statute under the mandatory provisions of the United States Code by Title 18, Section 591.

(h) On June 21, 1944, in the absence of petitioner, the United States District Court of the Eastern District of Illinois, Danville, entertained the Government's petition to correct the record, made findings of fact and thereupon committed petitioner to the custody of the Attorney General (in Case No. 11032) for five years on Count One of said indictment, three years on Count Two, two years on Count Three; said sentences to run consecutively; a fine of ten thousand dollars was also imposed.

(i) On June 22, 1944, in the absence of petitioner, the United States District Court of the Eastern District of Illinois, Danville, entertained the Government's petition to correct the record, made findings of fact and thereupon committed petitioner to the custody of the Attorney General (in Case No. 11074) for five years; said sentence to run consecutively to the sentence in Case No. 11032.

(j) On June 25, 1944, the said Marshal delivered petitioner into custody of the respondent, not by the authority of valid commitment, but under telegraphic instructions issued from the Department of Justice, Washington, D. C., on June 17, 1944.

(k) The Warden-respondent started the sentences on June 21, 1944, the day of petitioner's arrest by the United States Marshal. He contends that the United States Circuit Court of Appeals for the Ninth Circuit released petitioner, which decided that said sentences had not as yet begun to run.

4. Petitioner has heretofore made previous applications for Writ of Habeas Corpus to all District Judges at San Francisco, California. All were denied without hearing. Applications for Writ of Habeas Corpus were likewise made individually to each Circuit Judge of the Ninth Circuit that had participated in the decision discharging petitioner from the Warden-respondent's custody. All were rejected and returned to petitioner.

5. Petitioner invoked the exercise of the jurisdiction conferred on this Court by 28 U. S. C., Sections 377, 451, 28 U. S. C. A., Sections 377, 451, to issue Writs of Habeas Corpus in aid of its appellate jurisdiction. C. F. *Ex Parte Peru*, 318 U. S. 578, 582, 583, 63 S. Ct. 793, 796, 87 L. Ed. —.

Wherefore, your petitioner prays that a Writ of Habeas Corpus issue directed to the said Warden-respondent, James A. Johnston, Alcatraz, California, commanding him to make return before this Honorable Court, on a day certain therein to be specified, and show cause, if any he has, why a petition for Writ of Habeas Corpus should not be granted as prayed for herein by the petitioner; that petitioner be allowed sufficient time to file a traverse to said respondent's return and, that upon the petition for Writ of Certiorari heretofore prayed for, the petition for Writ of Habeas Corpus, the return thereto, the traverse to such return, that the petition for Writ of Habeas Corpus be granted and petitioner discharged forthwith.

Respectfully submitted,

CECIL L. WRIGHT,
Petitioner.

Dated: Alcatraz, California,

October 3rd, 1946.

United States of America,
 State of California,
 County of San Francisco.—ss.

Cecil L. Wright, having been first duly sworn according to law, deposes and says: That he is a citizen of the United States of America, by birth, and of legal age; that he is the petitioner in the above-entitled cause for Writ of Certiorari and Writ of Habeas Corpus; that he has read the above and foregoing petitions and knows the contents thereof; the same is true of his own knowledge.

(Signed) CECIL L. WRIGHT,
Affiant-Petitioner.

Subscribed and sworn to before me this *3rd* day
 of *October*, 1946.

.....

.....

(Seal)

Original signed and sealed

Appendix to Exhibits**PETITIONER'S EXHIBIT A**

**PETITION FOR ORDER STAYING ISSUANCE OF
MANDATE**

Comes now Frank J. Hennessy, United States Attorney for the Northern District of California, and A. J. Zirpoli, Assistant United States Attorney for the Northern District of California, counsel for the Appellant, and respectfully shows that on August 9, 1943, they advised the Attorney General of the United States of the order and opinion of this Honorable Court filed in this case on August 7, 1943, and that on August 10, 1943, they sent a copy of the said opinion and order to the Attorney General by air mail;

That they have not yet been instructed by the Attorney General to petition this Honorable Court for a rehearing nor have they as yet been advised by the Attorney General whether or not a petition for writ of certiorari will be made and docketed in the Clerk's office of the Supreme Court of the United States;

That pending the determination of the Attorney General of the advisability of petitioning for a rehearing or petitioning for a writ of certiorari to be made and docketed in the Clerk's office of the Supreme Court of the United States, appellant is desirous of having an order entered staying the issuance of the mandate herein to and including September 15, 1943, to enable him to file such petition for rehearing as he deems advisable in the premises and until October 1, 1943, should the petition for rehearing be denied;

WHEREFORE, appellant respectfully prays that this Court order and direct that the issuance under Rule 28 of the mandate of this Court in the above cause be stayed to and including September 15, 1943, to enable appellant to petition this Court for a rehearing and to and including October 1, 1943, in the event a petition for a rehearing not be filed or the same be denied, to enable appellant to petition the Supreme Court of the United States for a writ of certiorari.

FRANK J. HENNESSY,
United States Attorney,

A. J. ZIRPOLI,
Assistant United States Attorney,
Attorneys for Appellant.

PETITIONER'S EXHIBIT B**ORDER STAYING ISSUANCE OF MANDATE**

Upon application of Frank J. Hennessy, United States Attorney for the Northern District of California, and A. J. Zirpoli, Assistant United States Attorney for the Northern District of California, counsel for the Appellant, and good cause therefor appearing,

IT IS ORDERED that the issuance, under Rule 28, of the mandate of this Court in the above cause be, and is hereby, stayed to and including September 15, 1943, to enable the appellant herein to petition this Court for a rehearing, and to and including October 1, 1943, in the event a petition for rehearing not be filed prior to September 15, 1943, or the same be denied by this Court, to enable appellant to petition the Supreme Court of the United States for a writ of certiorari; and in the event the petition for a writ of certiorari to be made by the appellant herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said 1st day of October, 1943, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

Dated at San Francisco, California, August 26, 1943.

FRANCIS A. GARRECHT,
United States Circuit Judge.

(Endorsed)

Filed Aug. 26, 1943. Paul P. O'Brien, Clerk.

PETITIONER'S EXHIBIT C

United States of America, ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Honorable WILLIAM DENMAN, United States Circuit Judge, Greeting:

WHEREAS, lately before you, In re petition of Cecil Wright for a writ of Habeas Corpus and to secure release from the custody of James A. Johnston, Warden of the United States Penitentiary at Alcatraz, California, No. 23744, an Order granting Petition was duly filed on the 10th day of November, 1942, which said order is of record and fully set out in said matter in the office of the clerk of the said District Court, to which record reference is hereby made and the same is hereby expressly made a part hereof, and

made a part hereof, and as by the inspection of the Transcript of the Record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of an appeal prosecuted by James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, as appellant, against Cecil Wright, as appellee, agreeable to the Act of Congress in such cases made and provided, fully and at large appears:

AND WHEREAS, on the 25th day of May in the year of our Lord One Thousand Nine Hundred and forty-three the said cause came on to be heard before the said Circuit Court of Appeals, on the said Transcript of the Record and was duly submitted:

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court, that the

order of release in this cause be, and hereby is amended so as to provide for appellee's appearance after decision of the Supreme Court of the United States, providing this proceeding reaches such Court, under the same terms and provisions as in the trial judge's order in its reference to appeal to and judgment from this Court. In the absence of proper steps toward petitioning the United States Supreme Court to take cognizance of this proceeding or upon the Supreme Court's refusal to take cognizance thereof, the petitioner for the writ shall be forthwith delivered into the custody of the warden of the Illinois prison, from which he was released, or to any other officer of the State of Illinois authorized to receive him: should the State of Illinois for a reasonable time not to exceed twenty days after notice refuse or neglect to accept custody of appellee, the warden shall release him without more; as so amended, the said order be, and hereby is affirmed.

(August 7, 1943.)

YOU, THEREFORE, ARE HEREBY COMMANDED that such further proceedings be had in the said cause in accordance with the opinion and decree of this Court, and as according to right and justice and the laws of the United States ought to be had.

WITNESS, the Honorable Harlan Fiske Stone, Chief Justice of the United States, this 1st day of October, in the year of our Lord One Thousand Nine Hundred and forty-three and of the Independence of the United States of America the One Hundred and sixty-eighth.

PAUL P. O'BRIEN,

*Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit.*

United States of America,
Northern District of California,
City and County of San Francisco.—ss.

23744

Cecil Wright

vs.

James A. Johnston, Warden, etc.

I, C. W. Calbreath, Clerk of the United States District Court of the Northern District of California, do hereby certify the foregoing to be a full, true, and correct copy of the original MANDATE in the above-entitled cause, as the same remains of record and on file in the office of the Clerk of said Court.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 7th day of September, A. D. 1946.

C. W. CALBREATH,
*Clerk of the United States District Court,
Northern District of California.*

(Seal)

In the Supreme Court of the United States

OCTOBER TERM, 1946

Nos. 596 and 44 Misc.

CECIL L. WRIGHT, PETITIONER

v.

JAMES A. JOHNSTON, WARDEN, UNITED STATES
PENITENTIARY, ALCATRAZ, CALIFORNIA

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS
AND ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS
AND ON MOTION FOR LEAVE TO FILE A PETITION FOR A
WRIT OF HABEAS CORPUS

MEMORANDUM FOR THE RESPONDENT

These original proceedings in this Court are the most recent of numerous suits by petitioner seeking his release from federal imprisonment. Some of these suits are described in the Memorandum for Respondent in Opposition in *Wright v. Johnston*, No. 383, O. T. 1945, certiorari denied, January 7, 1946.¹ In the present proceedings petitioner seeks

¹ As shown by the present petition for certiorari (p. 7), several other habeas corpus proceedings intervened between No. 383, *supra*, and the present proceedings.

the issuance of a writ of certiorari in order to bring before this Court the transcript of record before the Circuit Court of Appeals for the Ninth Circuit in *Johnston v. Wright*, No. 10331, 137 F. 2d 914, in which case that court on August 7, 1943, affirmed a judgment releasing him from federal imprisonment on a writ of habeas corpus on the ground that his federal sentences, which were directed to begin upon the expiration of a state sentence he was serving, had not yet begun to run because his release on parole by state authorities had not terminated the state sentence. Subsequent to this decision, in June 1944, petitioner was recommitted under his federal sentences after he had been finally discharged from parole custody by the state authorities. See Memorandum in Opposition in No. 383, at p. 3.

Petitioner concedes (see Pet. 8-9) that the present petition for a writ of certiorari (No. 596) should be dismissed as being made out of time, since the judgment of the Circuit Court of Appeals for the Ninth Circuit to which the petition for the writ is directed was entered in 1943. He merely seeks to have the record in that action brought before this Court for consideration in connection with his motion for leave to file an original petition for habeas corpus (No. 44 Misc.), in which he alleges that his present detention is illegal under the 1943 decision of the Ninth Circuit. However, the validity of petitioner's pres-

ent detention under the commitments issued by the convicting court in June 1944 was adjudicated in an earlier habeas corpus proceeding which culminated in the denial of certiorari in No. 383 at the last term and also on a prior motion to vacate the judgments of conviction which was denied by the convicting court. As we pointed out in our Memorandum in Opposition in No. 383, petitioner's detention is not open to question. Hence, there is no occasion for the exercise of this Court's discretionary power to issue a writ of habeas corpus in aid of its appellate jurisdiction. See *Ex parte Abernathy*, 320 U. S. 219, and cases cited.

Respectfully submitted.

✓ GEORGE T. WASHINGTON,
Acting Solicitor General.

THERON L. CAUDLE,
✓ *Assistant Attorney General.*

✓ ROBERT S. ERDAHL,
✓ SHELDON E. BERNSTEIN,
Attorneys.

NOVEMBER 1946.